

BEFORE THE
BOARD OF PODIATRIC MEDICINE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of)
Issues Against:)

STEPHEN H. PILLMAN, D.P.M.)
Certificate No. E-2670)

Respondent.)
_____)

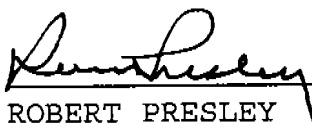
No. 1B-94-42493

• DECISION

The attached Proposed Decision is hereby adopted by the Board
of Podiatric Medicine as its Decision in the above-entitled matter.

This Decision shall become effective on July 8, 1996.

IT IS SO ORDERED June 6, 1996.

By: 
ROBERT PRESLEY
President
Board of Podiatric Medicine

BEFORE THE
BOARD OF PODIATRIC MEDICINE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of)	
Issues Against:)	Case No. IB-94-42493
)	
STEPHEN H. PILLMAN, D.P.M.)	OAH No. L-9609153
209 North 2nd Street)	
Barstow, CA 92311)	
)	
DPM License No. E-2670)	
)	
Applicant/Respondent.)	
_____)	

PROPOSED DECISION

On February 1, 1996, in Riverside, California, Greer D. Knopf, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Richard Garske, Deputy Attorney General, appeared on behalf of the complainant.

Elbert W. Muncy, Jr., Attorney at Law, appeared on behalf of respondent Stephen H. Pillman who was also present at the hearing.

Evidence was received and the record was held open for submission of additional evidence and closing briefs. On April 8, 1996 the record was closed and the matter was submitted.

FINDINGS OF FACT

I

Statement of issues number 1B-94-42493, dated August 25, 1995 was brought by complainant, James Rathlesberger, Executive Director of the Board of Podiatric Medicine, Department of consumer Affairs, State of California, against respondent Stephen H. Pillman. Respondent filed a notice of defense on August 28, 1995.

On March 7, 1995, respondent demanded that a hearing be held in this matter. On March 15, 1995, the Medical Board of California, Board of Podiatric Medicine (hereinafter referred to as "the Board") advised respondent that his request had been

referred to the Attorney General's Office for legal action. Thereafter, respondent's counsel and the deputy attorney general assigned to the case began negotiations to try to resolve the matter. Therefore, a statement of issues was not filed until August, 1995, despite respondent's earlier request that the matter be brought to hearing within 90 days.

During this time there is no evidence that respondent continued to demand that a hearing be set. There is no evidence that respondent sought to enforce his right to a hearing within 90 days after his initial request. He apparently did not seek the appropriate remedy by filing a petition for writ of mandate in the Superior Court pursuant to Code of Civil Procedure section 1085 to compel the Board to perform its duty to set the matter for a hearing. Once the statement of issues was filed, negotiations continued. Complainant requested on September 18, 1996 that the matter be set for hearing with the Office of Administrative Hearing. The matter was finally set for hearing on February 1, 1996.

At the hearing, respondent made a motion to dismiss the statement of issues due to complainant's failure to bring the matter to hearing within 90 days as required by Business and Professions Code section 487. Dismissing the statement of issues would not result in respondent being granted a license. It would simply put the parties back to the beginning as though the statement of issues had not been filed. A license is only granted when a respondent affirmatively establishes that he is qualified for the license, not simply because the Board may have made a procedural error in failing to set the hearing. The licensing laws are designed to protect the public and license only those practitioners who demonstrate that they are fully qualified. Nevertheless, dismissing the statement of issues is not the proper remedy for the Board's failure to set the case for hearing in a timely fashion. Respondent's remedy would have been to file a petition for a writ of mandate in the Superior Court.

II

On September 19, 1994, respondent submitted an application (hereinafter referred to as "the application"), to the Board of Podiatric Medicine, State of California (hereinafter referred to as "the Board") for issuance of an ankle license. An ankle license is an additional certification that is required for a podiatrist if he or she wishes to perform surgery on the ankle (Business and Professions Code section 2473). The Board grants an ankle license only when the applicant demonstrates sufficient competence in this area of practice. In order to demonstrate the required level of competence, an applicant must have either passed an oral examination for licensure administered by the Board or be certified by the American Board of Podiatric Surgery in foot and ankle surgery.

The application includes a section that requires the applicant to indicate how he is qualified for ankle licensure. Respondent checked the space that indicated he had "passed oral examination for licensure administered by the Board of Podiatric Medicine after April 30, 1994--\$50.00 Fee." Respondent signed the application under penalty of perjury certifying that the information contained in the application and any attachments are true and correct. In fact, respondent has not passed the oral examination for licensure administered by the Board at any time. Therefore, respondent falsified his application to the Board under penalty of perjury. His statement on the application was false and misleading. Respondent also attached a letter to his application wherein he stated: "I would like to declare for the purpose of the ankle licensure that I have taken and passed this oral examination administered by the Board of Podiatric Medicine." Respondent goes on to explain in his letter that he bases this assertion on his experience with the Board regarding patient Debra Jones (hereinafter referred to as "Jones"). Respondent engaged in misrepresentation when he submitted his application.

The Board denied respondent's application for ankle licensure on January 20, 1995

III

Respondent has failed to demonstrate that he meets the necessary qualifications for ankle licensure. Although respondent claimed in his application that he had taken and passed the Board's examination, he has not. Respondent now explains that he believes he has passed the examination because of two previous incidents wherein he disagreed with the Board and he ultimately prevailed. Respondent maintains that through a previous disciplinary proceeding as well as discussions with Board representatives regarding the patient Jones, respondent has demonstrated that he knows more than the Board about the subject of ankle surgery. Therefore, respondent maintains, he has demonstrated sufficient competence to claim that he has passed the ankle examination. This reasoning is completely convoluted and nonsensical.

During his testimony, respondent repeatedly interpreted events and statements in this convoluted manner to conveniently fit what he believed to be true. Respondent appears to be convinced that he is absolutely entitled to an ankle license without having to qualify like all other applicants. He became excited, irritated and even hostile at the hearing when challenged on his claims. Respondent's demeanor, his constant double talk and his convoluted reasoning at the hearing all detract from his credibility. The administrative law judge therefore rejects his claim that he is qualified for ankle licensure.

Respondent further failed to establish sufficient mitigating circumstances to justify the misinformation he submitted to the Board in trying to seek this license. His explanations are specious and do not justify his failure to be entirely honest on his application.

IV

Complainant seeks to recover \$5,644.54 in costs for the investigation and prosecution of this case pursuant to Business and Professions Code section 2497.5. Complainant submitted no evidence whatsoever of what tasks were performed for the amount of costs claimed. This provides the administrative law judge no information with which to adequately assess the reasonableness of the amount of costs asserted by complainant. However, the question of reasonableness need not be decided since there is no statutory authority herein for the award of costs in this type of proceeding. This case involves a statement of issues to determine whether or not an applicant should be granted a license. This case is not a disciplinary action against respondent.

DETERMINATION OF ISSUES

I

Cause exists to deny respondent's application for ankle licensure pursuant to Business and Professions Code sections 480 and 2473 in that respondent has failed to demonstrate sufficient knowledge of surgical treatment of the ankle as required by the Board, as set forth in Findings II and III.

II

Cause exists to deny respondent's application for ankle licensure pursuant to Business and Professions Code section 480 (c) in that respondent knowingly make a false statement of fact in his application, as set forth in Findings II and III.

III

Cause does not exist to award costs to complainant pursuant to Business and Professions Code section 2497.5 in that this action is not a "disciplinary proceeding" against a licensee. This is merely the resolution of an application for a license by way of a statement of issues. Although, respondent's actions with regard to his application for ankle licensure may have been grounds for discipline against his podiatric license, the Board chose not to proceed against him with such discipline. Business and Profession Code section 2497.5 does not provide that an award of costs is authorized against an applicant after resolution of a statement of issues.

ORDER

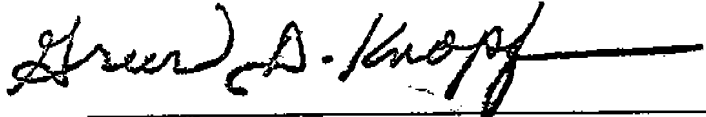
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The application of respondent Stephen H. Pillman, DPM for ankle licensure is hereby denied.

II

Complainant's request for costs is hereby denied.

Dated: May 7, 1996

A handwritten signature in cursive script, reading "Greer D. Knopf", followed by a horizontal line.

GREER D. KNOPF
Administrative Law Judge
Office of Administrative Hearings

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 STEVEN H. ZEIGEN,
Deputy Attorney General, State Bar No. 60225
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4 Post Office Box 85266
San Diego, California 92186-5266
5 Telephone: (619) 645-2074
6 Attorneys for Complainant

7
8 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**
11

12 In the Matter of the Statement of) NO. 1B-94-42493
Issues Against:)
13)
STEPHEN PILLMAN, DPM) STATEMENT OF ISSUES
14 209 N. Second Street)
Barstow, CA 92311)
15)
DPM License No. E-2670,)
16)
Applicant/Respondent.)
17

18
19 Complainant James Rathlesberger, who as cause for
20 denial of respondent's application for an ankle license, alleges:

21 PARTIES

22 1. Complainant is the Executive Director of the Board
23 of Podiatric Medicine, Department of Consumer Affairs, State of
24 California (hereinafter the "Board"), and makes and files this
25 Statement of Issues solely in his official capacity.

26 2. On or about September 19, 1994, Stephen Pillman,
27 DPM, submitted an application for an ankle license to the Board.
28 The application was denied by the Board on January 20, 1995.

1 Thereafter, respondent requested a hearing on March 7, 1995.

2 JURISDICTION

3 3. This Statement of Issues is made in reference to
4 the following statutes of the California Business and Professions
5 Code (hereinafter "Code"):

6 a. Code section 2473 provides:

7 "a doctor of podiatric medicine may perform
8 surgical treatment of the ankle, provided that the
9 person is certified by the board to perform that
10 treatment. The board shall require licensees who apply
11 for the certification to demonstrate sufficient
12 knowledge of surgical treatment of the ankle and
13 related subject matter and to provide evidence of staff
14 privileges at a licensed general acute care facility.
15 The board may accept successful completion of
16 certification examinations administered by the American
17 Board of Podiatric Surgery in lieu of any examination
18 it may require."

19 b. Code section 480 (c) provides that a board may deny
20 a license on the ground the applicant knowingly made a false
21 statement of fact required to be revealed in the application for
22 such license.

23 c. Section 2497.5 (a) permits the board to seek from
24 the licensee the actual and reasonable costs of the investigation
25 and prosecution of this case.

26 FACTS

27 4. Respondent's application for an ankle certificate
28 is subject to denial on account of the following:

1 a. Respondent checked the space on the ankle license
2 application indicating he "passed oral examination for licensure
3 administered by the Board of Podiatric Medicine after April 30,
4 1984, \$50.00 Fee."

5 b. Respondent, by his own admission, in a statement
6 attached to the application admitted never having taken or
7 passed that examination.

8 c. Respondent claimed instead some work he did on a
9 prior patient, Debra Jones, was tantamount to having taken and
10 passed said examination.

11 d. The work performed by respondent on Debra Jones was
12 not the equivalent of having taken and passed said ankle
13 examination. Indeed, the consultants reviewing respondent's
14 treatment in that case concluded an ankle certificate was not
15 needed.

16 e. Respondent has failed to meet the qualifications
17 for the receipt of an ankle certificate and will have to take and
18 pass the ankle examination administered by the Board of Podiatric
19 Medicine for which there is a \$750.00 fee.

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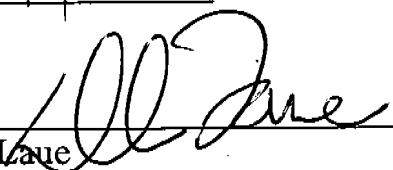
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1
2 **PRAYER**

3 WHEREFORE, complainant requests that a hearing be held on the matters
4 alleged herein, and that if said allegations, or any of them, are found
5 to be true, that the application of Stephen Pillman, DPM, for an ankle
6 license be denied.
7

8 Dated: 8-25-94
9

10 
11 Doug Laue
12 Interim Executive Director
13 Medical Board of California
14 Department of Consumer Affairs
15 State of California

16 for

17 James Rathlesberger
18 Executive Officer
19 Board of Podiatric Medicine
20 Department of Consumer Affairs
21 State of California

22 Complainant
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25
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